

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEROME MCELROY,

Plaintiff,

v.

AGENCY,

Defendant.

CASE NO. 3:21-cv-05891-DGE

ORDER ADOPTING REPORT AND  
RECOMMENDATION

On December 7, 2021, Plaintiff, proceeding pro se, filed a complaint alleging that he has been “tortured with mind control” for over 30 years by an unidentified government agency.

(Dkt. No. 1.)

On December 15, 2021, Plaintiff filed a motion asking the court to appoint counsel to represent him. (Dkt. No. 7.) The Court has discretion to appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1), but an appointment of counsel should only be granted under “exceptional circumstances.” *Agyeman v. Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). When determining whether exceptional circumstances exist, the

1 Court considers “the likelihood of success on the merits as well as the ability of the petitioner to  
2 articulate his claims pro se in light of the complexity of the legal issues involved.” *Weygandt v.*  
3 *Look*, 718 F.2d 952, 954 (9th Cir. 1983). The Court finds no such exceptional circumstances  
4 here.

5 On December 21, 2021, United States Magistrate Judge J. Richard Creatura issued a  
6 report and recommendation (“R&R”) recommending that Plaintiff’s complaint be dismissed  
7 without prejudice because the Court lacks subject matter jurisdiction. (Dkt. No. 8.) Judge  
8 Creatura found that Plaintiff did not specify the basis for jurisdiction and did not list the statutes  
9 under which he seeks relief or the defendant’s name and identifying information. (*Id.* at 1.)  
10 Judge Creatura found that granting Plaintiff leave to amend his complaint would be futile  
11 because Plaintiff’s claim was patent was patently frivolous. (*Id.* at 2.) Plaintiff did not respond  
12 to Judge Creatura’s R&R.

13 The Court, having reviewed the Report and Recommendation of Chief Magistrate Judge  
14 J. Richard Creatura and the relevant record, does hereby find and ORDER:


15 (1) The Court DENIES Plaintiff’s Motion to Appoint Counsel (Dkt No. 7.)

16 (2) The Court ADOPTS the Report and Recommendation.

17 (3) This matter is DISMISSED without prejudice and the case is CLOSED.

18 (4) The Clerk is directed to send copies of this Order to Plaintiff and Judge Creatura.

19 Dated this 11<sup>th</sup> day of January, 2022.

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23 David G. Estudillo  
24 United States District Judge